

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>EXCEL TELECOMMUNICATIONS, INC. FOR A</b>	)	<b>CASE NO. EXC-T-02-1</b>
<b>CERTIFICATE OF PUBLIC CONVENIENCE AND</b>	)	
<b>NECESSITY TO PROVIDE LOCAL EXCHANGE</b>	)	<b>ORDER NO. 29202</b>
<b>TELECOMMUNICATIONS SERVICES.</b>	)	
	)	

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On January 28, 2002, Excel Telecommunications, Inc. (Excel, Company) filed an Application for a Certificate of Public Convenience and Necessity to provide competitive local exchange service within the State of Idaho. Excel proposed to initially provide residential customers a full range of telecommunications and data services including local service, private line, data transmission service and Internet service via UNE-Ps and resold services. If future economic conditions permit, it may offer services to business customers as well. Excel's Application stated that the Company was not requesting authority to provide service in areas that fall within the scope of rural exemptions. The Company also requested the Commission waive the requirement for an escrow account to cover customer deposits.

In the Notice of Application and Modified Procedure issued February 4, 2003, the Commission solicited comments regarding Excel's Application. Order No. 29190. No comments were received other than those submitted by Commission Staff. Based on the comments, the law and the record, the Commission grants Excel's Application.

**STAFF COMMENTS**

To provide a historical context for Excel's Application, Staff noted that Excel previously applied for a Certificate of Public Convenience and Necessity in Case No. EXC-T-97-1. Staff opposed that 1997 Application based on the Company's record of operations as an interexchange carrier and numerous complaints from Excel's customers regarding billing problems, rates and policies, carrier selection and slamming, and other miscellaneous issues. Excel had also been sanctioned by the Federal Communications Commission (FCC) for slamming and forging letters of agency. Despite 21 comments expressing support for Excel's Application, Excel requested permission to withdraw its Application without prejudice until its business plans permitted it to concentrate on obtaining certification and providing high quality cost-efficient services in Idaho. The Commission granted this request on October 17, 1997 and

dismissed the case without prejudice. Order No. 27159. Excel, which sold more than \$750 million of communications services in 2002, was purchased by VarTec in April 2002.

Staff indicated that the number of complaints against Excel from Idaho customers has significantly decreased since Excel's 1997 Application. However, Staff was concerned when the Commission received five complaints in a five-month period in 2002. Of these complaints, four customers complained of slamming but only two provided Staff with enough information to pursue investigations. In both cases, Excel was found to have slammed its customers. In one instance, Excel reported that the customer's service was changed by a relative who was not a resident of the household but presented herself as an authorized decision maker. Excel reimbursed the customer for all charges incurred in this process. In the second instance, Excel failed to respond to the Commission's correspondence. According to the Commission's Customer Relations Rules, failure to respond to a slamming allegation within 21 days will result in a determination by Staff that the customer was slammed. IDAPA 31.41.01.703.02. Excel apologized and reimbursed the customer for the charges incurred and subsequently fired the representative who failed to respond.

In response to Staff's concerns, Excel explained to Staff in February 2003 that it has taken several steps to address and correct the concerns Staff identified in 1997. First, Excel now utilizes a nationwide third party verification (TPV) system to confirm residential primary interexchange carrier changes. The Company has also developed a specialized group within the Customer Service Department whose sole function is to investigate and resolve slamming allegations and other related issues. This group ensures that consumers' concerns are fully addressed and any appropriate credits and adjustments are made. Third, Excel's independent representatives (IRs) are encouraged to build ongoing relationships with their customers to ensure continued satisfaction with Excel's products and services. Excel has additionally adopted a strict "zero tolerance policy" and business code of ethics. Excel states that it will promptly terminate the employment of any IR who is found to have engaged in illegal or improper conduct, specifically with regards to slamming. Staff also stated that in recent years, several state Commissions and the FCC have noted the extraordinary steps that Excel has implemented to advance the accuracy of the customer order provisioning process and to devise complaint resolution safeguards — effectively setting an industry standard.

Excel submitted unaudited income statements, balance sheets and cash flow statements for 1999, 2000 and 11 months of 2001 with its Application. These documents reflect financial events prior to VarTec's purchase of Excel and showed declining revenue accompanied by reduced expenses. The Company's total profit margin was up slightly in 2001 from 2000, and its net operating income was slightly less negative in 2001 than in 2000. In response to Staff's concerns, Excel submitted an affidavit from VarTec dated July 25, 2002 wherein VarTec guarantees the financial support of Excel. According to Staff, Excel agreed to correct a few points in its final tariff to address Staff's other concerns and to comply with all applicable Commission rules.

In conclusion, Staff recommended that the Commission grant Excel's Application for a Certificate of Public Convenience and Necessity to provide statewide service in Idaho (excluding service in areas that fall within the scope of rural exemptions). Staff also recommended the Commission accept VarTec's guarantee of financial support in lieu of a surety bond for Excel.

#### **COMMISSION FINDINGS**

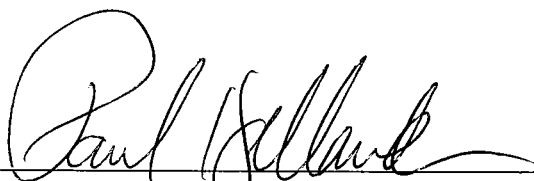
Based on the comments, the law and the record, the Commission grants the Application. When considering an application for a Certificate, the Commission must determine if the applicant has the necessary qualifications to provide service while still fostering competition in the local telecommunications market. Based upon our review of the filing and the record in this case, the Commission finds that Excel's filing satisfies the requirements of the Commission's Rules and Procedural Order No. 26665. *Id.* Thus, we approve Excel's Application for a Certificate of Public Convenience and Necessity to allow the Company to provide telecommunications services statewide. This is consistent with our previous Orders granting statewide authority to provide telecommunications services to carriers meeting the established requirements. Although Excel's previous customer relations and slamming issues cause us concern, the Commission is encouraged that Excel has taken steps to remedy these problems on a prospective basis. Because VarTec has submitted a written guarantee of financial support for Excel, the Commission further finds it reasonable to waive the requirement for Excel to maintain an escrow account to cover customer deposits.

## ORDER

IT IS HEREBY ORDERED that Excel Telecommunications, Inc. is granted a Certificate of Public Convenience and Necessity to provide basic local exchange services.

THIS IS A FINAL ORDER. Any person interested in this Order or in interlocutory Orders previously issued in this case may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this *4<sup>th</sup>* day of March 2003.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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